



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Jul

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,411	03/02/2005	Martin Klebsattel	13173-00009-US	9675
23416	7590	08/10/2006	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899			PAGE, BRENT T	
			ART UNIT	PAPER NUMBER
			1638	
DATE MAILED: 08/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

11

Office Action Summary

Application No.

10/526,411

Applicant(s)

KLEBSATTEL ET AL.

Examiner

Brent Page

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 14-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-11 and 14-25 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-2, and 14-23, drawn to a method for the targeted transgenic expression of nucleic acid sequences in nonreproductive floral tissues of plants, using floral-specific promoters.

Group II, claims 3-8, drawn to a method for identifying and/or isolating promoters of genes which encode a promoter having specificity for nonreproductive floral tissue.

Group III, claim 9, drawn to a polypeptide.

Group IV, claims 10-11, drawn to a nucleic acid sequence encoding a floral-specific protein.

Group V, claim 24, drawn to a method for producing human or animal foods.

Group VI, claims 24 and 25, drawn to a method for producing pharmaceuticals or fine chemicals.

The inventions listed as Groups I-VI do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The claims are related by the technical feature of a nucleic acid including the promoter region that encodes a protein wherein the expression of the gene is specific to nonreproductive floral tissue. However, this feature is not special since it does not

Art Unit: 1638

constitute an advance over the prior art. Takatsuji et al (1991 The EMBO Journal 11:241-249) disclose the EPF1 gene is specifically expressed in the petals of Petunia (see page 245 first full paragraph, for example).

Furthermore, the Inventions listed above are distinct for the following reasons:

Group I, a first method of using a first product, requires floral-specific promoters, a multitude of coding sequences including antisense RNA-encoding sequences, and methods for plant transformation and regeneration not required by any other Group.

Group II, a second method of using a second product, requires a multitude of nucleic acid sequences, polymerase chain reaction primers, and methods for DNA amplification not required by any other group.

Group III, a third product, requires amino acid sequences and protein isolation steps not required by any other group.

Group IV, a fourth product, requires nucleic acid sequences, and nucleic acid isolation steps not required by any other group.

Group V, a third method, requires food processing steps not required by any other group.

Group VI, a fourth method, requires chemical and pharmaceutical production and isolation in a plant system, which requires a multitude of nucleic acid sequences and processing steps not required by any other invention.

In addition to the above restriction requirement, Applicant is also required to select a single nucleotide sequence representing the promoter should Applicant elect Group I (SEQ ID NO:1 or 2) or Group IV (SEQ ID NO: 15 or 17 or 19 or 21), a single

Art Unit: 1638

nucleotide sequence representing an identification nucleic acid sequence (SEQ ID NO: 11 or 13 or 15 or 17 or 19 or 21) OR a single nucleotide sequence representing an identification nucleic acid sequence that encodes a single amino acid sequence represented by (SEQ ID NO: 23 or 24 or 25 or 26 or 27 or 28 or 29 or 30 or 31 or 32) should Applicant elect Group II. Applicant is also required to elect a single amino acid sequence representing a single polypeptide should Applicant elect Group III (SEQ ID NO: 16 or 18 or 20 or 22). Distinctly different DNA sequences and distinctly different amino acid sequences are structurally distinct chemical compounds and are deemed to normally constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq.

Applicant is required to elect a Group above representing a single nucleotide sequence. Electing a sequence is not to be construed as a requirement for an election of species, since each nucleotide sequence is not a member of a single genus of invention, but constitutes an independent and patentably distinct invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

Art Unit: 1638

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent Page whose telephone number is (514)-272-5914. The examiner can normally be reached on Monday-Friday 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571)-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brent T Page

DAVID T. FOX
PRIMARY EXAMINER
GROUP 180-1638

